

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN, INC., et al.,

Plaintiffs,

v.

DONALD TRUMP, President of the United
States, et al.,

Defendants.

Civil Action No. 17-253 (RDM)

**NOTICE OF SUPPLEMENTAL AUTHORITIES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs submit this notice to apprise the Court of recently published materials that further demonstrate, contrary to Defendants' arguments, that this case is ripe for judicial review and that Executive Order 13771 and the implementing guidance documents of the Office of Management and Budget (OMB) are currently having concrete impact.

Since this case was briefed and argued last summer, federal agencies have withdrawn or delayed pending rulemakings in the course of implementing Executive Order 13771 and the OMB guidance documents. OMB has stated that the number of withdrawn and delayed actions is 1,579. *See* Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions, at <https://www.reginfo.gov/public/do/eAgendaMain> (Dec. 14, 2017). OMB has directly attributed these actions to Executive Order 13771. *See* OMB, Regulatory Reform: Two-for-One and Regulatory Cost Caps, at <https://www.reginfo.gov/public/do/eAgendaEO13771> (Dec. 14, 2017). In addition to delays and withdrawals, OMB has reported the "Results" of implementing the Executive Order: "Agencies issued 67 deregulatory actions and only 3 regulatory actions." *Id.*

Numerous specific agency actions demonstrate that these withdrawals and delays are attributable to Executive Order 13711 and impact plaintiffs and their members, including the following:

- On December 5, 2017, the Department of Transportation (DOT) withdrew a proposal to require air carriers and ticket agents to clearly disclose to consumers certain information about fees for checked bags, wherever fare and schedule information is provided to consumers. *See* DOT, Notice of withdrawal of proposed rulemaking, 82 Fed. Reg. 58778 (Dec. 14, 2017). The 1-page Federal Register notice describes the reason for the withdrawal as follows: “The Department’s existing regulations already provide consumers some information regarding fees for ancillary services. The withdrawal of this rulemaking corresponds with the Department’s and Administration’s priorities and is consistent with Executive Order 13771.” *Id.*

- On December 15, 2017, the Department of Housing and Urban Development (HUD) withdrew five proposed rules, including one entitled “Floodplain Management Protection of Wetlands Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard.” HUD, Withdrawal of Propose Rules to Reduce Regulatory and Financial Burden, 82 Fed. Reg. 60693 (Dec. 22, 2017). The 1-page Federal Register notice describes the reason for the withdrawal as follows:

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” signed January 27, 2017 (82 FR 9339), requires that for every new regulation issued, at least two prior regulations be identified for removal, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. Additionally, as required by Executive Order 13777, entitled “Enforcing the Regulatory Reform Agenda,” signed February 24, 2017 (82 FR 12285), HUD established a Regulatory Task Force that is identifying agency regulations that should be repealed, replaced, or modified. Accordingly, as part of this review, the Regulatory Task Force has determined to withdraw these five rules.

Id. Plaintiff NRDC’s comments on that proposed rule explained the importance of this rule to the interests of NRDC and its members, “not only [to] minimize the cost to the taxpayer of repeatedly paying to rebuild flood-damaged properties, but also to avoid placing people in harm’s way.” NRDC, Comment dated Dec. 27, 2017, at <https://www.regulations.gov/document?D=HUD-2016-0124-0042>.

Dated: December 22, 2017

Respectfully submitted,

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